

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PINNACLE ENVIRONMENTAL CORPORATION, :  
Plaintiffs, : 23-CV-10732 (JMF)  
:-----  
-v- : ORDER  
:-----  
VOLMAR CONSTRUCTION, INC. et al., :  
Defendants. :  
:----- X

JESSE M. FURMAN, United States District Judge:

On May 16, 2024, Third-Party Defendant Bank of America, N.A. (“BOA”) filed a motion to dismiss Volmar Construction Inc.’s (“Volmar”) Third-Party Complaint under Rule 12(b) of the Federal Rules of Civil Procedure. Under Rule 15(a)(1)(B), a party has twenty-one (21) days after the service of a motion under Rule 12(b) to amend its complaint once as a matter of course.

Accordingly, it is hereby ORDERED that Volmar shall file any amended third-party complaint by **June 6, 2024**. Pursuant to Paragraph 1.B. of the Court’s Individual Rules and Practices in Civil Cases, available at <https://nysd.uscourts.gov/hon-jesse-m-furman>, any amended complaint should be filed with a redline showing all differences between the original and revised filing. Volmar will not be given any further opportunity to amend the complaint to address issues raised by the motion to dismiss. **In light of that, the May 31, 2024 deadline set yesterday for either (1) Volmar and Truist to file a stipulation dismissing the Third-Party Complaint as against Truist or (2) Volmar to file an opposition to Truist’s motion to dismiss, ECF No. 39, is hereby extended through and until the same date, June 6, 2024.** If Volmar amends in accordance with this Order, Truist will be subject to the below schedule set for BOA’s motion. That is to say, if Volmar amends without having dismissed its Third-Party Complaint as to Truist, BOA’s and Truist’s motions to dismiss will proceed on parallel tracks.

If Volmar does amend, by three (3) weeks after the amended complaint is filed, BOA shall: (1) file an answer; (2) file a new motion to dismiss; or (3) file a letter on ECF stating that it relies on the previously filed motion to dismiss. If BOA files an answer or a new motion to dismiss, the Court will deny the previously filed motion to dismiss as moot. If BOA files a new motion to dismiss or indicates that it relies on its previously filed motion to dismiss, any opposition shall be filed within fourteen days, and any reply shall be filed within seven days of any opposition.

If no amended complaint is filed, Volmar shall file any opposition to the motion to dismiss by **June 6, 2024**. BOA’s reply, if any, shall be filed by **June 13, 2024**.

SO ORDERED.

Dated: May 17, 2024  
New York, New York

  
JESSE M. FURMAN  
United States District Judge